

**Johanson & Graves, Inc. and Plumbers & Pipefitters Local 276, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, AFL-CIO. Case 1-CA-30857**

February 9, 1994

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

Upon a charge filed by the Union on August 30, 1993, the General Counsel of the National Labor Relations Board issued a complaint on October 14, 1993, against Johanson & Graves, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 10, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On December 14, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 4, 1993, notified the Respondent that unless an answer were received by November 12, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, at its facility in Danvers, Massachusetts, has been engaged as a plumbing and heating contractor in the construction industry doing industrial and commercial construction. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 for enterprises within the Commonwealth of Massachusetts

who are directly engaged in interstate commerce. During this same time period, the Respondent, in conducting its business operations, purchased and received at its Danvers facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, New England Mechanical Contractors Association Incorporated (the Association) has been an organization composed of various employers engaged in the building and construction industry, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. About September 1, 1992, the Association and the Union entered into a collective-bargaining agreement which is effective by its terms for the period September 1, 1992, to August 31, 1994 (the 1992-1994 agreement). About November 16, 1992, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit described below by entering into an "Assent of Participation" which bound the Respondent to the terms and conditions of employment of the 1992-1994 agreement, and any extensions or successor agreement thereto, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act. The following employees (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the members of the Association and the employers who have authorized the Association to bargain on their behalf, including Respondent, engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

At all material times the Union has been the limited exclusive collective-bargaining representative of the unit.

Since March 2, 1993, the Respondent has failed and refused to make for its employees in the unit the payments which have become due to the Health & Welfare Fund, Pension Fund, Annuity Fund, and Education Fund pursuant to articles XX, XXI, and XXII of the 1992-1994 agreement. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes

of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 8(d) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Health & Welfare Fund, Pension Fund, Annuity Fund, and Education Fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Johanson & Graves, Inc., Danvers, Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to make contractually required payments for its unit employees which have become due to the Health & Welfare Fund, Pension Fund, Annuity Fund, and Education Fund. The unit includes the following employees:

All employees of the members of the Association and the employers who have authorized the Association to bargain on their behalf, including Respondent, engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole by making the contractually required payments to the funds and by reimbursing the unit employees for any expenses suffered as a result of the Respondent's failure to make contractually required fringe benefit fund payments, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Danvers, Massachusetts, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 9, 1994

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to make contractually required payments for our unit employees which have become due to the Health & Welfare Fund, Pension Fund, Annuity Fund, and Education Fund. The unit includes the following employees:

All employees of the members of the Association and the employers who have authorized the Asso-

ciation to bargain on their behalf, including Johanson & Graves, Inc., engaged in the installation of all plumbing and/or pipefitting systems and component parts thereof, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole by making the contractually required payments to the funds and by reimbursing the unit employees for any expenses suffered as a result of our failure to make contractually required payments to the fringe benefit funds

JOHANSON & GRAVES, INC.